IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

CRL.A.No. 586 of 2001()

ST.1210/1999 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR
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APPELLANT: COMPLAINANT

SURESHKUMAR C.V.,
S/O.VELAPPAKUTTY,
CHETHIKATTIL HOUSE , NEAR PARAMEKAVU
TEMPLE, THRISSUR, THRISSUR DISTRICT.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENTS: ACCUSED/ RESPONDENT
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1. **SANTHOSH A., S/O.AYYAPPAN NAIR,**
M/S.P.K.PARAMESWARAN PILLAI,
MAYANA BUILDINGS , MARAKKAD ROAD,
CHELAI, THIRUVANANTHAPURAM.

2. **STATE OF KERALA, REP.BY**
DIRECTOR GENERAL OF PROSECUTION,
HIGH COURT , ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

NO STEPS. NO REPRESENTATION DISMISSED.

02.08.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.A. TO JUDGE

A.K. Basheer, J.

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Crl.R.P.No. 586 of 2001

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Dated this the 18th day of January, 2008.

ORDER

Petitioner was concurrently found guilty under section 138 of the Negotiable Instruments Act, by the trial court as well as the appellate court. The trial court while convicting the petitioner had sentenced him to pay a fine of Rs.35,000/- and in default to suffer simple imprisonment for 3 months. It was further directed that Rs.33,000/- out of the fine amount shall be paid to the complainant as compensation under Section 357 of the Code of Criminal Procedure.

2. The learned Sessions Judge in appeal, confirmed the order of conviction. However in modification of the sentence, the learned Sessions Judge directed the petitioner to pay a fine of Rs.2,000/- and in default to undergo simple imprisonment for one month . It was further directed that the petitioner accused shall pay a compensation of Rs.33,000/- to the complainant within 4 months, failing which the trial court was directed to take appropriate steps to recover the same from the accused in accordance with law.

3. It is brought to my notice that the complainant had expired during the pendency of this revision petition. Though the legal representative of the complainant had been sought to be impleaded, the notice issued to her has not yet been served. However I have proceeded to hear the learned counsel for the petitioner since this revision petition has been pending before this Court since 2001.

4. Though it is vehemently contended by the learned counsel for the petitioner that the courts below were not justified in holding the petitioner guilty under Section 138 of the Act, I am not impressed by the above contention. As rightly noticed by the courts below, the accused had not bothered to adduce any evidence in support of his contentions which were found totally untenable by the courts below. The accused had not also sent any reply to the statutory demand notice issued to him when Ext.P1 cheque was dishonored due to insufficiency of funds in his account. Significantly the accused did not have a case that the signature in Ext.P1 cheque was not that of his. The case set up by the accused was that he had entrusted a blank signed cheque to the complainant at the time when he had borrowed some money from him. According to the accused he had discharged the entire liability; but the complainant had failed to return the blank signed cheque. The court below after a careful evaluation of the entire materials available on record had found that the above contention was totally untenable.

5. Having heard learned counsel for the petitioner and having perused the materials available on record, I do not find any reason to interfere with the concurrent order of conviction and sentence passed by the courts below. However in the peculiar facts and circumstances petitioner is granted time to deposit the amount of compensation before the trial court till March 31, 2008 failing which the learned Magistrate shall execute the sentence.

Revision Petition is disposed of in the above terms.

an. **A.K. Basheer**
Judge.